

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, July 1, 1998

DIVISION ONE

A077566 -- Gregory Chinn v. Duane Lowe, etc., et al.

The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A080256 -- In re Jovon G., a Person Coming Under the Juvenile Court Law.

The order is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A080464 -- Viesturs T. Petersons et al. v. Larry D. Coate.

The order is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

DIVISION TWO

A079271 -- Karen Gatton, etc., et al. v. A.P. Green Services, Inc.

Order Modifying Opinion and Denying Rehearing; The above captioned opinion filed on June 8, 1998, is modified in the following respects: (See Modification). Respondent's request for further modification is denied. Appellant's petition for rehearing is denied.

These modifications do not effect a change in the judgment. Haerle, Acting P.J.

Wednesday, July 1, 1998 (continued)

DIVISION THREE

A077049 -- San Mateo Community College District v. Half Moon Bay Limited Partnership et al.

Order Modifying Opinion; By The Court: It is ordered that the opinion filed herein on June 5, 1998, be modified in the following particulars: (See Order).

The opinion in the above entitled matter was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports and it is so ordered.

There is no change in the judgment. Phelan, P.J. (Certified for Publication.)

A077757 -- The People v. Andre Lamont Ray.

By The Court: The petition for rehearing is denied. Phelan, P.J.

A078003 -- United Public Employees Local 790, AFL-CIO v. Board of Port Commissioners of the Port of Oakland, et al.

By The Court: The request for publication of the opinion filed June 3, 1998, is denied. Corrigan, Acting P.J.

A079008 -- The People v. Ronald C. Rosenberg.

The judgment is affirmed. Parrilli, J. We concur: Phelan, P.J., Corrigan, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, July 2, 1998

DIVISION ONE

A078555 -- The People v. Jason Lee Hain.

Order Modifying Opinion and Denying Rehearing; The Court: It is ordered that the opinion filed herein on June 5, 1998, be modified in the following particular: (See Order). This modification does not change the judgment.

The petition for rehearing is denied. Stein, Acting P.J. (Not for Publication.)

A078780 -- Estate of Bruna Henry, Deceased.

Giuseppe Battistini v. Elizabeth Hansen.

Accordingly, the appeal is dismissed. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

DIVISION TWO

A075902 -- The People v. Charles Ray Henderson and Alhondro Myers.

The judgments are affirmed. Kline, P.J. We concur: Haerle, J., Lambden, J. (Not for Publication.)

Thursday, July 2, 1998 (continued)

A078909 -- In re Desiree M., a Person Coming Under the Juvenile Court Law.

A081182 -- In re Desiree M. on Habeas Corpus.

The order declaring Desiree a ward and committing her to CYA is affirmed. The petition for writ of habeas corpus is denied. Lambden, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

A083290 -- Gregory Bogan v. the Superior Court of Alameda County, The People of the State of California, R.P.I.

By The Court: The petition for writ of mandate/prohibition is denied. Haerle, Acting P.J.

A083296 -- GTE Mobilenet of California v. Personal Cellular Services, Inc.

The petition for writ of supersedeas/stay is denied. Kline, P.J.

DIVISION FOUR

A068802 -- The People v. Joshua Harvest.

The Court: It is ordered that the opinion filed herein on June 5, 1998, be modified in the following particulars: (See Order).

Both appellant's and respondent's petitions for rehearing are denied.

This modification does effect a change in the judgment. Hanlon, P.J. (Not for Publication.)

Thursday, July 2, 1998 (continued)

A078715 -- The People v. Jonathan Wolfe Arnold et al.

Order Modifying Opinion and Denying Rehearing; The Court: It is ordered that the opinion filed herein on June 15, 1998, be modified in the following particular: (See Order).

Respondent's petition for rehearing is denied. This modification does not effect a change in the judgment. Hanlon, P.J. (Not for Publication.)

DIVISION FIVE

A079214 -- The People v. Kristen Leigh Braz.

We vacate the trial court's imposition of three years probation on appellant, and remand for further proceedings in accordance with the views expressed in this opinion. On remand, appellant may renew her motion to have her offense reduced to a misdemeanor. Our remand is not meant as an indication of our view of how the trial court should rule on such a motion. We affirm the trial court's judgment in all other respects. Jones, J. We concur: Peterson, P.J., Haning, J. (Certified for Partial Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Monday, July 6, 1998

DIVISION TWO

A079037 -- The People v. William Michael Christman.

The judgment is affirmed. Haerle, Acting P.J. We concur: Lambden, J.,
Ruvolo, J. (Not for Publication.)

DIVISION FIVE

A080401 -- The People v. Edward E. Williams.

The judgment is affirmed. Jones, J. We concur: Peterson, P.J., Haning, J.
(Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Tuesday, July 7, 1998

DIVISION ONE

A081683 -- The People v. Derrick Eugene Jefferson.

The judgment is affirmed. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

DIVISION TWO

A074676 -- North Oakland Medical Clinic et al. v. James M. Rogers et al.

By The Court: The court grants rehearing on its own motion. Kline, P.J.

A075456/A078523 -- Rosalba Cortez v. Purolator Air Filtration Products Co.

Order Modifying Opinion and Denying Rehearing; The Court: The above captioned opinion filed on June 10, 1998, is modified in the following respects: (See Modification).

These modifications do not effect a change in the judgment and respondent's petition for rehearing is denied. Haerle, Acting P.J.

A079326 -- The People v. Joseph Keith Allison.

The judgment is affirmed. Lambden, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Tuesday, July 7, 1998 (continued)

A080664 -- The People v. Thomas Frederick Williams.

The judgment is affirmed. Lambden, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A082960 -- Raley's v. The Superior Court of Sonoma County, Arden LeMar, R.P.I.

By The Court: The petition for writ of mandate/prohibition/stay is denied. Kline, P.J.

DIVISION THREE

A077287 -- The People v. Herbert Moore.

Order Modifying Opinion; By The Court: It is ordered that the opinion filed herein on June 22, 1998, be modified as follows: (See Order).

There is no change in the judgment. Phelan, P.J. (Not for Publication.)

A080719 -- In re Dijon P., a Person Coming Under the Juvenile Court Law.

The order of the juvenile court denying the section 388 petition is affirmed. Walker, J. We concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

A081307 -- In re Ray L. et al., Persons Coming Under the Juvenile Court Law.

For all the foregoing reasons, the order selecting long-term foster care as the permanent plan for the appellant minors is reversed, and the cause remanded with directions to the juvenile court to convene a new selection and implementation hearing under section 366.26 within 30 days of the date the remittitur issues in this case and, absent evidence of a material change in the minors' circumstances since December 4, 1997, to enter a new and different order pursuant to subdivision (b)(2), identifying adoption as the placement goal for each

Tuesday, July 7, 1998 (continued)

of the minors and requiring the department to make efforts to locate an appropriate adoptive family for each of the minors within a period not to exceed 90 days.

We recognize that, at a hearing on June 26, 1998, the juvenile court found by clear and convincing evidence that the minors are not adoptable, declined to order another section 366.26 hearing, and continued its previous order of long-term foster care for all four children. This information was provided to us in the minors' request to take additional evidence on appeal (Code Civ. Proc., § 909), which was initially filed with their reply brief on June 1, 1998, and supplemented on July 6, 1998, after oral argument. Neither respondents nor the department have objected to the minors' request, or the supplemental materials filed with this Court, and the request is hereby granted.

While we express no opinion on the merits of the juvenile court's order of June 26, 1998, we strongly urge the court to reconsider its finding of nonadoptability in light of our holding in this case, and the fact that the department has not, to this day, undertaken an intensive search for appropriate adoptive placements for the minors, as it would have been required to do pursuant to a subdivision (b)(2) order properly entered at the section 366.26 hearing. As minors' counsel has noted, all four minors have suffered prejudice as a result of the juvenile court's error and the delays inherent in court proceedings regardless of attempts to expedite them. Failure to correct the error at this stage would compound that prejudice, especially as to the three younger children. Entering an order pursuant to subdivision (b)(2), even at this late date, may also obviate the need to perfect an appeal from the juvenile court's order of June 26, 1998.

Pursuant to the stipulation of the parties at oral argument, and as authorized by California Rules of Court, rule 25(b), the remittitur shall issue forthwith. Phelan, P.J. We concur: Corrigan, J., Parrilli, J. (Not for Publication.)

DIVISION FOUR

A080237 -- The People v. Russell Dean Black.

The judgment is affirmed. Reardon, J. We concur: Hanlon, P.J., Poché, J. (Not for Publication.)

Tuesday, July 7, 1998 (continued)

DIVISION FIVE

A079695 -- The People v. Roy Lee Gensaw.

The judgment is reversed. Jones, J. We concur: Peterson, P.J., Haning, J.
(Not for Publication.)

Courtroom Minutes
Division 4
Tuesday July 7, 1998

Court convened at 9:30 a.m. in its courtroom at 303-2nd Street, 4th Floor, San Francisco. Present: Hanlon, P.J., Poche, J., Reardon, J.; Channing Hoo, Deputy Clerk and CHP Officer Curtis Reese, Bailiff.

A074791	Henrietta Bloomfield et al.
A075862	v.
A075881	Patrick Murphy et al.
A076305	Cause called and argued by William Rust, counsel for appellants Murphy et al., and by Richard Hodge, counsel for respondents. Cause ordered submitted.
A080058	Brass Door, Inc. et al.
	v.
	Farmers Brothers Company et al.
	Cause called and argued by Elliot Bien, counsel for appellants Farmers et al., and by William Westover and John E. Lautemann, counsel for respondents. Cause ordered submitted.
	The Court recessed at 10:39 a.m.

Courtroom Minutes
Division 4
Tuesday July 7, 1998

Court reconvened at 2:00 p.m. in its courtroom at 303-2nd Street, 4th Floor, San Francisco. Present: Hanlon, P.J., Poche, J., McGuiness, J., Jim Campbell, Deputy Clerk and CHP Officer C. Reese, Bailiff.

A078218 People
 plaintiff/respondent,
 v.
 Melvin Horton Harris,
 defendant/appellant.

Cause called. Colleen Rohan argued on behalf of appellant, Melvin Horton Harris. Christopher Grover, D.A.G., argued on behalf of respondent. Cause submitted.

At this point the court reconstituted itself to include: Hanlon, P.J., Reardon, J. and McGuiness, J.

A078587 People,
 plaintiff/respondent,
 v.
 Samantha Cristine Spencer,
 defendant/appellant.

Cause called. Neal Sanders argued, via teleconference, on behalf of appellant, Samantha Cristine Spencer. Christopher Grove, D.A.G., argued on behalf of respondent. Cause submitted.

A078308 Catherine M. et al.,
A079443 plaintiffs/appellants,
v.
SF Community College District et al.,
defendants/respondents.

Causes called. Pamela Price argued on behalf of appellants Catherine M. et al.
Arthur Hartinger argued on behalf of respondents. Causes Submitted.

A079345 Fireman's Fund Insurance Co.,
plaintiff/respondent/appellant,
v.
Maryland Casualty Co. et al.,
defendants/appellants/respondents.

Cause called. James Neilsen argued on behalf of appellants Maryland Casualty
Co. et al. Ira Goldberg argued on behalf of respondent. Cause submitted.

The Court adjourned at 3:50 p.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, July 8, 1998

DIVISION ONE

**A073451 and A078149 -- Information Systems and Networks
Corporation v. Securacom, Inc., et al.**

Order Modifying Opinion and Denying Rehearing; The Court: It is ordered that the opinion filed herein on June 11, 1998, be modified in the following particulars: (See Order).

There is no change in the judgment.

The petition for rehearing is denied. Swager, Acting P.J. (Not for Publication.)

DIVISION TWO

**A076003 -- Som Gupta et al. v. Farmers Insurance Group, dba Truck
Insurance Exchange.**

The judgment is affirmed. Truck shall recover its costs on appeal. Kline, P.J. We concur: Haerle, J., Lambden, J. (Not for Publication.)

A078785 -- The People v. Artie Irikki Adanandus.

The judgment is affirmed. Kline, P.J. We concur: Haerle, J., Lambden, J. (Not for Publication.)

Wednesday, July 8, 1998 (continued)

A079788 -- The People v. Antonio Maldonado Rivera et al.

The judgment is reversed. This matter is remanded to the trial court for further proceedings consistent with this opinion. Ruvolo, J. We concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

A080474 -- Lee R. Stafford, et al. v. Toan Mach, Allstate Insurance Company.

By The Court: It is ordered that the opinion filed herein on June 16, 1998, be modified in the following particulars: (See Order).

This modification does not effect a change in the judgment.

The petition for rehearing is denied. Kline, P.J.

DIVISION THREE

A076095 -- James Hendry v. Brobeck, Phleger & Harrison et al.

The judgment is affirmed. Costs on appeal are awarded to Brobeck. Phelan, P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

DIVISION FOUR

A082006 -- The People of the State of California v. Leonard Stevenson.

By The Court: The above-entitled appeal is ordered transferred from Division Three to Division Four. Co-defendant's appeal, People v. Eric Johnson (A081154), was previously filed in Division Four of this Court, which by this court's Internal Operating Practices and Procedures, Section 21(b), requires a transfer of this case to Division Four. This order is made pursuant to Rule 20(b)(1) of the California Rules of Court. Strankman, Administrative Presiding Justice.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, July 9, 1998

DIVISION ONE

A078594; A080623 -- In re the Marriage of Arthur David McCauley and Mari D. McCauley.

In case No. A078594, the order denying husband's motion to terminate or modify spousal support and ordering him to pay attorney fees of \$1,500 under section 271 is affirmed. In the second, A080623, the order terminating support and terminating jurisdiction over support is reversed and the matter is remanded for reconsideration. Costs on appeal to wife. Whether wife should be awarded attorney fees incurred on appeal is a matter for the trial court to determine. (*In re Marriage of Trearse* (1987) 195 Cal.App.3d 1189, 1196.) Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A080283 -- Donald J. Ross et al. v. Lucky Stores, Inc. et al.

The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

DIVISION TWO

A082969 -- Gary Littrell & Elliott Grizzle v. The Superior Court of Del Norte County, The People of the State of California, R.P.I.

By The Court: The petition for writ of mandate/prohibition is denied. We note that the trial court made factual findings (Ex.M, at pp. 133-134 and 150-151), from what the confidential informants stated in the sealed documents, which will be read to the jury if requested by petitioners. Kline, P.J.

Thursday, July 9, 1998 (continued)

**A083323 -- Joseph H. Sherman v. The Superior Court of Marin County,
Office of the Public Defender of Marin County, R.P.I.**

By The Court: The petition for writ of mandate is denied. Kline, P.J.

DIVISION FOUR

**A075974, A080199 -- In re the Marriage of Barbara Morgret and
Charles G. Campbell.**

The orders are affirmed. Reardon, J. We concur: Hanlon, P.J., Poché, J.
(Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, July 10, 1998

DIVISION ONE

A080565 -- The People v. Gary Roberson.

The judgment is affirmed. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

DIVISION TWO

A076484 -- The People v. Richard Dudley Stevens.

We affirm the judgment. Lambden, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

A077961 -- The People v. Charles Davis.

Although we have concluded appellant did not waive credit for all time served prior to April 8, 1996, it is also undisputed that appellant waived credits at the September 11, 1995 hearing for all time he actually spent in drug rehabilitation programs. Appellant contends he has at "a bare minimum" been wrongfully deprived of 295 days of actual custody credit plus a 146 days of section 4019 conduct credit. Neither this claim nor any concession by respondent permits us to calculate the actual credit appellant should receive. Accordingly, we reverse that portion of the judgment relating to presentence credits and remand the matter to the trial court for resentencing. Lambden, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Friday, July 10, 1998 (continued)

DIVISION FOUR

A081782 -- The People v. Dephonso Duplessis.

The judgment is affirmed. Poché, J. We concur: Hanlon, P.J., McGuinness, J. (Not for Publication.)

DIVISION FIVE

A078967 -- Seymour Block v. Major League Baseball et al.

The order denying certification is affirmed. Peterson, P.J. We concur: Haning, J., Jones, J. (Certified for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Monday, July 13, 1998

DIVISION ONE

A077511 -- The People v. Nancy Carvalho et al.

Accordingly, the judgments are affirmed. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A078711 -- The People v. John Otis Cleveland.

Appellant's final contention is that the trial court erred by imposing a "mandatory" consecutive term for count II pursuant to section 1170.12, subdivisions (a)(6) and (a)(7). Our high court recently ruled that "a trial court retains discretion" under the three strikes law to impose consecutive or concurrent terms. (*People v. Hendrix* (1997) 16 Cal.4th 508, 510.) The Attorney General concedes that error occurred, and we agree.

Accordingly, the case is remanded to the trial court with directions to entertain discretion in resentencing appellant on counts I and II to either consecutive or concurrent terms. In all other respects, the judgment is affirmed. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

DIVISION FOUR

A076538 -- The People v. Raymond Fisher.

The judgment is reversed. Hanlon, P.J. We concur: Poché, J., McGuiness, J. (Not for Publication.)

Monday, July 13, 1998 (continued)

**A080058 --Aetna Casualty & Surety Co. v. Farmers Brothers Co., et al.
Brass Door, Inc. v. Farmers Brothers Co., et al.**

We affirm the judgment. Reardon, J. We concur: Hanlon, P.J., Poché, J.
(Certified for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Tuesday, July 14, 1998

DIVISION TWO

A077436 -- The People v. Latroy Demos Ervin.

The judgment is affirmed. Haerle, Acting P.J. We concur: Lambden, J., Ruvolo, J. (Not for Publication.)

DIVISION THREE

A077656 -- Debra A. Wilson v. Don Fitzpatrick Associates et al.

The judgment is affirmed. Respondents are awarded costs on appeal. Phelan, P.J. We concur: Corrigan, J., Walker, J. (Not for Publication.)

A080952 -- In re Ricky M., a Person Coming Under the Juvenile Court Law.

Affirmed. Walker, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

Tuesday, July 14, 1998 (continued)

A082572

A082573 -- Christine R. et al. v. The Superior Court for the County of Sonoma, Sonoma County Department of Human Services, R.P.I.

The petitions for extraordinary relief are denied on their merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) Since the section 366.26 hearing is set for July 15, 1998, this opinion is final immediately. (Cal. Rules of Court, rule 24(d).) Phelan, P.J. We concur: Corrigan, J., Parrilli, J. (Not for Publication.)

DIVISION FOUR

A078959 -- Leland B. Evans et al. v. Pillsbury, Madison & Sutro et al.

The order is reversed with directions to the trial court to strike the 20th cause of action alleged in the amended cross-complaint. Appellants shall recover their costs of appeal. Poché, Acting P.J. We concur: Reardon, J., McGuiness, J. (Certified for Publication.)

A079034 -- The People v. Donald Lloyd Phillips.

The judgment is affirmed. Hanlon, P.J. I concur: McGuiness, J. I concur in the judgment: Poché, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Tuesday, July 14, 1998

Court convened at 9:00 a.m. in its Courtroom at 303 Second Street, Marathon Plaza, South Tower, Fourth Floor, San Francisco, California.

Present: Phelan P.J., Corrigan J., Parrilli, J., Walker J., and J. Casados, Deputy Clerk.

A076964 Justice Phelan did not participate.
 Syntex Corporation et al.,
 v.
 Lowsley-Williams and Companies et al.
 Cause called and argued by Paul Nelson, counsel for appellants,
 and Barry Levin, counsel for respondents. Cause ordered submitted.

A074636 Justice Parrilli did not participate.
 In re Estate of Evelyn J. Condon, Deceased.
 Michael R. Condon et al.,
 v.
 Carolyn McHenry.
 Cause called and argued by Andrew Zabronsky, counsel for appellants,
 and Paul Barulich, counsel for respondent. Cause ordered submitted.

A077417 Justice Walker left the bench.
 City of Vallejo,
 v.
 Thomas V. Roland;
 County of Contra Costa.
 Cause called and argued by Thomas Roland, appellant in pro per, and by
 telephone conference Mary Roth, Deputy Attorney General, counsel for
 respondent. Cause ordered submitted.

A076936

Nancy D. Lavelle,

v.

Bankamerica Corporation et al.

Cause called and argued by Margaret Roccki, counsel for appellant, and
by Patricia Gillette, counsel for respondents. Cause ordered submitted.

Court adjourned.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, July 15, 1998

DIVISION ONE

A080712 -- JMA Properties, Inc. v. The Broe Companies, Inc.

We conclude that the trial court erred in sustaining without leave to amend the demurrer to the cross-complaint of JMA. In holding that the trial court should have granted leave to amend the cross-complaint, we do not reach the question whether the proposed amended cross-complaint properly alleged additional causes of action.

The judgment is reversed. Costs to appellant. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

DIVISION TWO

A082562 -- Catherine C. v. The Superior Court of Contra Costa County, Contra Costa County Department of Social Services, R.P.I.

A082475 -- James Michael G. v. The Superior Court of Contra Costa County, Contra Costa County Department of Social Services, R.P.I.

The petitions are denied on the merits. (Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888 [subsequent challenge by appeal barred]; § 366.26, subd. (l)(1).) Given the nearness of the section 366.26 hearing set for July 27, 1998, our decision is final as to this court immediately (rule 24(d)). Lambden, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A083356 -- In re Earl Foster, on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied. Kline, P.J.

Wednesday, July 15, 1998 (continued)

A083375 -- In re Ralph A. Taylor, on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied. Kline, P.J.

DIVISION THREE

A077408 -- Marvin Patrick Morris v. Commissioner of the California Department of Real Estate.

For all the foregoing reasons, the order of the trial court denying Morris' petition for writ of mandate is affirmed. Phelan, P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

DIVISION FOUR

A078218 -- The People v. Melvin Horton Harris.

The order sustaining the petition and committing appellant to Atascadero State Hospital is affirmed. Poché, J. We concur: Hanlon, P.J., McGuinness, J. (Not for Publication.)

A078260 -- The People v. Alex Thomas.

The Court: Appellant's motion for recall of our remittitur and reissuance of the opinion filed herein on April 22, 1998, is granted. The remittitur of June 22, 1998, is ordered stricken. The clerk of the Solano County Superior Court is directed to return the certified copy of the remittitur for cancellation. Poché, Acting P.J.

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Wednesday, July 15, 1998

The Court met at 9:30 a.m. in its courtroom at 303 - Second Street, 4th Floor, San Francisco. Present: Haerle, Acting P.J., Lambden, J., Ruvolo, J. and S. Graham, Deputy Clerk.

A080239 The People

v.

Dorian Redus

A082552 In re Dorian Redus, on Habeas Corpus

Causes called and argued by Barry Karl, counsel for appellant and Laurence Sullivan, Deputy Attorney General, counsel for respondent. Causes ordered submitted.

A080868 Mattole Watershed Preservation Association,
etc., et al.

v.

Department of Forestry and Fire Protection, et al.

Cause called and argued by John Davidson, Deputy Attorney General, counsel for appellants and Sharon Duggan, counsel for respondents. Cause ordered submitted.

A077655 Richard Fogel, et al.

v.

City and County of San Francisco

Cause called and argued by Mathew Stephenson, counsel for appellants and Owen Clements, Deputy City Attorney, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P. J., Lambden, J., Ruvolo, J. and S. Graham, Deputy Clerk.

A079441 Thanh H. Nguyen
v.
California State Automobile Association
Inter-Insurance Bureau
Cause called and argued by Sean Ellis, counsel for appellant and Richard Loveland, counsel for respondent. Cause ordered submitted.

A080425 Carole Anne Burke, et al.
v.
Michael Milani, et al.
Cause called and argued by Lawrence Alioto, counsel for appellants and Jerome Matthews, counsel for respondents. Cause ordered submitted.

At this point in the proceedings, Justice Lambden left the bench and Justice Haerle joined the bench.

A078619 Bank of America, NT & SA
v.
The Home Insurance Company
Cause called and argued by Michael Soloff, counsel for appellant and Philip F. Shinn, counsel for respondent. Cause ordered submitted.

A079768 David Michael Thimmes
v.
Brenda Sally Wojcik, et al.
Cause called and argued by Pius Joseph, counsel for appellant and James Molinelli, counsel for respondent. Cause ordered submitted.

Court recessed until Thursday, July 16, 1998 at 9:30 a.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, July 16, 1998

DIVISION ONE

A074010 -- The People v. Robert J. Brown, et al.

The judgment with respect to Oliver is affirmed. Brown's conviction of possession of cocaine base for sale is reversed, his convictions on the remaining counts are affirmed, and the matter is remanded for resentencing. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

DIVISION TWO

A077945 -- Henry Curry v. San Francisco Newspaper Agency.

The judgment is affirmed. Ruvolo, J. We concur: Kline, P.J., Lambden, J. (Not for Publication.)

A081449 -- County of Sonoma v. Carlo Bongio.

The order is affirmed. Lambden, J. We concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

A083388 -- Ebtesam Ayesh & Yasin Ayesh, et al. v. Department of Alcohol Beverage Control & Alcoholic Beverage Control Appeals Board.

By The Court: The petition for writ of review/stay is denied. Kline, P.J.

Thursday, July 16, 1998

DIVISION THREE

A077838 -- Insurance Company of North America v. Air Canada.

The order granting Air Canada's motion to limit its liability is reversed; the judgment is vacated; and the case is remanded. Appellant to recover its costs on appeal. Corrigan, J. We concur: Phelan, P.J., Parrilli. (Not for Publication.)

DIVISION FIVE

A079472 -- The People v. Henry Matthew Davis.

The judgment is affirmed. Peterson, P.J. We concur: Haning, J., Jones, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Thursday, July 16, 1998

The Court met at 9:30 a.m. in its courtroom at 303 - Second Street, 4th Floor, San Francisco. Present: Kline, P.J, Haerle, J. Lambden, J. and I. Santos, Deputy Clerk.

- A076360 The People,
 v.
 Jay Shawn Johnson.
Cause called and argued by Stephen Bedrick, counsel for appellant, and Richard Rochman, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A079254 Diego Garcia,
 v.
 Southland Mall.
Cause called and argued by Sean Ellis, counsel for appellant, and Elizabeth Jacobi, counsel for respondent. Cause ordered submitted.
- A079068 MCM Construction, Inc.,
A079232 v.
 City and County of San Francisco et al.;
 Myers/Kulchin-Condon, RPI.
Cause called and argued by Larry Dingus, counsel for appellant, Howard McElhinny, counsel for respondents, and Howard Curtis, counsel for real party in interest. Cause ordered submitted.
- A081569 Christopher Morrison et al.,
 v.
 Viacom, Inc.
Cause called and argued by Joseph Alioto, counsel for appellant, and Peter Greene, counsel for respondent. Cause ordered submitted.
- A079015 Eden Hospital District,
 v.
 Kimberle Belshe, as Director of California

Dept. of Health Services.

Cause called and argued by Thomas Weiss, counsel for appellant, and Ralph Johnson, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, July 17, 1998

DIVISION ONE

**IN THE MATTER OF THE ASSIGNMENT OF THE HONORABLE
HERBERT W. WALKER TO SIT AS A JUSTICE OF THIS COURT.**

By The Court: It is ordered that the assignment of the Honorable Herbert W. Walker, Associate Justice of the Court of Appeal, First Appellate District, Division Three, to sit as a Justice in Division One be spread upon the minutes in full. Strankman, P.J.

A082168 -- In re Tony Harvey on Habeas Corpus.

The September 16, 1997, order of the San Francisco Superior Court (No. 122039) committing petitioner Tony Harvey for involuntary treatment as a mentally disordered offender (§ 2972) is annulled. The petition for writ of habeas corpus is granted. To the extent that petitioner's present confinement at Atascadero State Hospital is based upon the annulled order, he is ordered discharged upon issuance of the remittitur herein. This opinion is final as to this court immediately. (Cal. Rules of Court, rule 24(d).) Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

Friday, July 17, 1998 (continued)

DIVISION FIVE

**IN THE MATTER OF THE ASSIGNMENT OF THE HONORABLE
PHILIP A. CHAMPLIN TO SIT AS A JUSTICE OF THIS COURT.**

By The Court: It is ordered that the assignment of the Honorable Philip A. Champlin, Judge of the Napa County Superior Court, to sit as a Justice in Division Five be spread upon the minutes in full. Jones, Acting P.J.

A078217 -- The People v. Mario Alberto Hernandez-Orellana.

The judgment is affirmed. Haning, J. We concur: Peterson, P.J., Jones, J.
(Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Monday, July 20, 1998

DIVISION ONE

A078546 -- In re the Marriage of Larry and Valarie Klingenberg.

Order Modifying Opinion and Denying Rehearing: The Court: It is ordered that the opinion filed herein on June 18, 1998, be modified in the following particulars: (See Order).

There is no change in the judgment.

The petition for rehearing is denied. Strankman, P.J. (Not for Publication.)

A080790 -- The People v. Brenda H. Brown.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager (Not for Publication.)

DIVISION TWO

A080459 -- P & K Trucking v. Steve Navarro et al.

The judgment of dismissal is reversed, and the matter is remanded for further proceedings consistent with this opinion. P & K Trucking is awarded costs on appeal. Lambden, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Monday, July 20, 1998 (continued)

A081969 -- Patelco Credit Union v. State Farm fire & Casualty Company.

A082096 -- State Farm Fire & Casualty Company v. Patelco Credit Union.

We dismiss Patelco's appeal from the orders in the Stonich lawsuit. We decline to dismiss its appeal from the order in the Trevor lawsuit. Lambden, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

DIVISION THREE

A079854 -- In re Christopher D. et al., Persons Coming Under the Juvenile Court Law.

The order is affirmed. Parrilli, J. We concur: Corrigan, Actg. P.J., Walker, J. (Not for Publication.)

A079952 -- In re Leon M., a Person Coming Under the Juvenile Court Law.

The jurisdictional order is modified to provide that appellant's violation of Penal Code, section 243.3 was a misdemeanor offense. (See *In re James J.* (1986) 187 Cal.App.3d 1339, 1342 [jurisdictional order is reviewable on appeal from dispositional order].) As so modified, the order is affirmed. Parrilli, J. We concur: Phelan, P.J., Corrigan, J. (Not for Publication.)

A080392 -- The People v. Nelson Aguilar.

We agree with counsel that there are no arguable issues, and affirm the judgment. Parrilli, J. We concur: Phelan, P.J., Walker, J. (Not for Publication.)

Monday, July 20, 1998 (continued)

A080595 -- The People v. Joshua S. Wanlin.

We have reviewed the entire record and conclude there are no arguably meritorious issues to raise on appeal. Consequently, the judgment is affirmed. Parrilli, J. We concur: Phelan, P.J., Walker, J. (Not for Publication.)

DIVISION FIVE

A078913 -- In re Angelique G. et al., Persons Coming Under the Juvenile Court Law.

We affirm the judgment. Jones, J. We concur: Peterson, P.J., Haning, J. (Not for Publication.)

A079546 -- C.P., a Minor, etc., et al. v. City and County of San Francisco.

The order is affirmed. Costs to respondents. Haning, J. We concur: Peterson, P.J., Jones, J. (Not for Publication.)

A080365 -- Santa Rosa City High School District v. Santa Rosa Teachers Association et al.

The judgment is affirmed. Jones, J. We concur: Peterson, P.J., Haning, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Tuesday, July 21, 1998

DIVISION FIVE

A078882 -- The People v. John Maddalone.

The judgment is affirmed. Haning, J. We concur: Peterson, P.J., Jones, J.
(Not for Publication.)

A080234 -- The People v. Richard Wayne Clay.

The judgment is affirmed. Haning, J. We concur: Peterson, P.J., Jones, J.
(Not for Publication.)

Courtroom Minutes
Division 4
Tuesday July 21, 1998

Court convened at 9:30 a.m. in its courtroom at 303-2nd Street, 4th Floor,
San Francisco. Present: Hanlon, P.J., Poche, J., Reardon, J., Jim Campbell,
Deputy Clerk and CHP Officer Curtis Reese, Bailiff.

- A078348 Andy Saberi,
 v.
 City Council of Redwood City.
Cause called and argued by Batya Smernoff, counsel for appellant Andy Saberi,
and by David Schricker, counsel for respondent. Cause ordered submitted.
- A074309 Michael L. Jensen et al.,
 v.
 Charles L. Moore.
Cause called and argued by Ronald Silveria, counsel for appellant Charles L.
Moore, and by Christopher Costin, counsel for respondents. Cause ordered
submitted.

The Court adjourned at 10:20 a.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, July 22, 1998

DIVISION TWO

A078476 -- The People v. Chad Schneider.

The judgment is affirmed. Kline, P.J. We concur: Haerle, J., Ruvolo, J.
(Not for Publication.)

**A079441 -- Thanh H. Nguyen v. California State Automobile
Association Inter-Insurance Bureau.**

We affirm the judgment and Nguyen is to pay costs on appeal. Lambden, J.
We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A079579 -- The People v. James Davis.

The judgment is affirmed. Kline, P.J. We concur: Haerle, J., Ruvolo, J.
(Not for Publication.)

A080239 -- The People v. Dorian Redus.

A082552 -- In re Dorian Redus, on Habeas Corpus.

The judgment extending commitment is affirmed. The petition for writ of
habeas corpus is denied. Lambden, J. We concur: Haerle, Acting P.J., Ruvolo, J.
(Not for Publication.)

**A080263 -- Everett H. Moore v. Commission on Central Marin
Sanitation Agency, Central Marin Sanitation Agency, R.P.I.**

The order denying the petitions for writ of mandate is affirmed. Lambden,
J. We concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

Wednesday, July 22, 1998 (continued)

A082826 -- The People of the State of California v. The Superior Court of San Francisco County, Appellate Department, Arthur Soper, R.P.I.

By The Court: The petition for writ of mandate is denied. Kline, P.J.

A082853 -- Tara Lee Bryan v. The Superior Court of San Francisco County, Bank of America, N.T. & S.A., R.P.I.

By The Court: The petition for writ of mandate/stay is denied. Kline, P.J.

DIVISION THREE

A081281 -- The People v. Rick James Horton.

The judgment is affirmed. Corrigan, J. We concur: Phelan, P.J., Parrilli, J.
(Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, July 23, 1998

DIVISION ONE

A077614 -- The People v. Daniel Franklin Borden.

The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A077926 -- In re Maurice A., a Person Coming Under the Juvenile Court Law.

Accordingly, the judgment is affirmed. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A078891 -- The People v. Raymond Howard Robinson.

The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A080452 -- City and County of San Francisco v. Rickey Louis Rounds.

The order appealed from is affirmed. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A080912 -- The People v. Ashkan Darakhshan.

The judgment is affirmed. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

Thursday, July 23, 1998 (continued)

A081285 -- The People v. Douglas Eugene Pack.

The judgment is affirmed. Swager, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A081335 -- Phil Rains v. Labor Connection et al.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

DIVISION TWO

A074676 -- North Oakland Medical Clinic et al. v. James M. Rogers et al.

The order of April 9, 1996, is affirmed. Respondents are awarded their costs on appeal. Kline, P.J. We concur: Haerle, J., Ruvolo, J. (Certified for Publication.)

A078001 -- The People v. Bartholomew Yang.

The judgment of the trial court is affirmed. Kline, P.J. We concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A083051 -- In re Destinee L., a Person Coming Under the Juvenile Court Law.

The petition for extraordinary relief is denied on the merits. (See Cal. Const., art VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888.) Petitioner is barred in any subsequent appeal from making further challenges to the order terminating reunification services and setting a hearing under section 366.26. (See § 366.26, subs. 1(1), (2).) Since the permanency planning hearing is set for September 14, 1998, this opinion is final as to this court forthwith. (Rule 24(d).) Ruvolo, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

Thursday, July 23, 1998 (continued)

DIVISION THREE

A074573 -- The People v. Gloria Doheny.

Affirmed. Walker, J. We concur: Phelan, P.J., Corrigan, J. (Not for Publication.)

A076726 -- Thomas A. Cohen et al. v. First Republic Thrift & Loan et al.

For all the foregoing reasons, the judgment of the trial court is affirmed. Costs to respondents. Phelan, P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

A075671 -- The People v. Saysana Thepkaysone.

A079792 -- In re Saysana Thepkaysone, on Habeas Corpus.

The judgment is affirmed. Corrigan, J. We concur: Phelan, P.J., Walker, J. (Not for Publication.)

DIVISION FOUR

A074309 -- Carroll Anglin et al. v. Charles L. Moore.

The order is affirmed with costs and attorney's fees to respondents. The amount of respondents' attorney's fees on appeal is left for the determination of the trial court. Hanlon, P.J. We concur: Poché, J., Reardon, J. (Not for Publication.)

A077044 -- The People v. Robert Edward Collins.

The judgment is affirmed. Hanlon, P.J. We concur: Reardon, J., McGuinness, J. (Not for Publication.)

Thursday, July 23, 1998 (continued)

DIVISION FIVE

A078060 -- David Glenn et al. v. Mannie Joel et al.

The order imposing sanctions is affirmed. Costs are awarded to respondents. Peterson, P.J. We concur: Haning, J., Jones, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, July 24, 1998

DIVISION ONE

A079592 -- The People v. Freddie Gibson.

The appeal is dismissed as moot. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

A080674 -- The People v. Edwin J. Anderson.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

A081264 -- C. A. Terhune, as Director, etc. v. The Superior Court of Contra Costa County, Barry Whitley, R.P.I.

The alternative writ is discharged and the stay previously imposed shall remain in effect until the remittitur issues. The petition for a peremptory writ is denied. Strankman, P.J. We concur: Stein, J., Swager, J. (Certified for Publication.)

A081590 -- The People v. Abdullah W. Mustafaa.

The matter is remanded for resentencing in accordance with the views expressed in this opinion. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

Friday, July 24, 1998 (continued)

DIVISION TWO

A076812 -- The People v. Geovani Francisco Olano.

The judgment is reversed. Haerle, J. We concur: Kline, P.J., Lambden, J.
(Not for Publication.)

DIVISION FIVE

A078483 -- Thaddeus Keiffer v. Bechtel Corporation.

We affirm the judgment. The case is remanded to the trial court for a determination of the amount of the award of attorney fees and costs on appeal. Jones, J. We concur: Peterson, P.J., Haning, J. (Certified for Partial Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Monday, July 27, 1998

DIVISION TWO

A076360 -- The People v. Jay Shawn Johnson.

The judgment of conviction is reversed as to counts one and three; it is affirmed as to count two. Kline, P.J. We concur: Haerle, J., Lambden, J. (Not for Publication.)

A079015 -- Eden Hospital District v. Kimberle Belshe, as Director of the California Department of Health Services.

The judgment is affirmed. Kline, P.J. We concur: Haerle, J., Lambden, J. (Certified for Publication.)

A079768 -- David Michael Thimmes v. Brenda Sally Wojcik et al.

The judgment of the trial court is affirmed. Ruvolo, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

A080868 -- Mattole Watershed Preservation Association et al. v. California Department of Forestry and Fire Protection et al., Barnum Timber Company, R.P.I.

Since we find no factual or legal basis for reversing the trial court's order awarding attorney fees to respondents, the order is affirmed. Costs are awarded to respondents as the prevailing parties. (Cal. Rules of Court, rule 26 (a).) Ruvolo, J. We concur: Haerle, Acting P.J., Lambden, J.

Monday, July 27, 1998 (continued)

A082962 -- In re Peter Louis Rowland, on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied. Kline, P.J.

A083504 -- In re Gregory A. Bogan, on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied. Kline, P.J.

DIVISION THREE

A079725 -- The People v. Harold Mintz Jones.

Order Modifying Opinion and Denying Rehearing; By The Court: It is ordered that the opinion filed on June 29, 1998, be modified as follows: (See Order).

There is no change in the judgment. Appellant's petition for rehearing is denied. Phelan, P.J. (Not for Publication.)

DIVISION FOUR

A078348 -- Andy Saberi v. Redwood City City Council.

The judgment is affirmed with costs to respondent. Hanlon, P.J. We concur: Poché, J., Reardon, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Tuesday, July 28, 1998

DIVISION TWO

A079068

A079232 -- MCM Construction, Inc. v. City & County of San Francisco et al., Myers/Kulchin-Condon, R.P.I.

The judgment of the superior court denying the writ of mandate is affirmed. Respondents shall recover their costs on appeal. Kline, P.J. We concur: Haerle, J., Lambden, J. (Not for Publication.)

A080594 -- The People v. Herman Lashon Moore.

The judgment is affirmed. Haerle, J. We concur: Kline, P.J., Lambden, J. (Not for Publication.)

A083537 -- James X. Moura, et al. v. The Superior Court of Alameda County, Manuel E. Prado, R.P.I.

By The Court: The petition for writ of mandate/prohibition/stay is denied. Summary judgment having been granted, petitioners have a remedy at law by way of appeal. Kline, P.J.

DIVISION FOUR

A080077 -- The People v. William Richard DeCoty, Jr.

Judgment affirmed. Reardon, J. We concur: Poché, Acting P.J., McGuiness, J. (Not for Publication.)

Tuesday, July 28, 1998 (continued)

DIVISION FIVE

A081031 -- The People v. Matthew Patrick Canela.

The judgment is affirmed. Jones, J. We concur: Peterson, P.J., Haning, J.
(Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Tuesday, July 28, 1998

Court convened at 9:00 a.m. in its Courtroom at 303 Second Street, Marathon Plaza, South Tower, Fourth Floor, San Francisco, California.

Present: Phelan P.J., Corrigan J., Parrilli, J., Walker J., and J. Casados, Deputy Clerk.

- A077974 Justice Phelan did not participate.
The People,
v.
Mark A. Kroncke.
Cause called and argued by Lawrence A. Boxer, counsel for appellant,
and Linda Murphy, Deputy Attorney General, counsel for respondent.
Cause ordered submitted.
- A076330 Justice Parrilli did not participate.
Michael Murphy et al.,
v.
Peter Lynch et al.
Cause called and argued by Kenneth Kennedy, counsel for appellants,
and F. Thomas Huster, counsel for respondents. Cause ordered submitted.
- A079584 Justice Corrigan left the bench.
George Gordon,
v.
Milton A. Douzos.
Cause called and argued by Stephen J. Kennedy, counsel for appellant, and
Mark Molumphy, counsel for respondent. Cause ordered submitted.

Court adjourned.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, July 29, 1998

DIVISION TWO

A079254 -- Diego Garcia v. Southland Mall.

We affirm the judgment and Garcia is to pay costs on appeal. Lambden, J.
We concur: Kline, P.J., Haerle, J. (Not for Publication.)

DIVISION THREE

A076754 -- L. Damian v. Romana D. Tamondong et al.

For the foregoing reasons, the judgment of the appellate department is affirmed, and the case is remanded to the municipal court for further proceedings consistent with this opinion. Tamondong shall recover her costs, including reasonable attorney fees, as the “prevailing party” on appeal (§ 2983.4). Phelan, P.J. We concur: Corrigan, J., Parrilli, J. (Certified for Publication.)

A077677 -- Estate of Dave Peeler, Deceased.

Ellis Brown v. Avonnet Peeler et al.

The judgment is affirmed. Costs on appeal are awarded to respondents. Corrigan, Acting P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

Wednesday, July 29, 1998 (continued)

A078293 & A079469 -- Maurice S. Kanbar, Elliott S. Kanbar v. Joanni I. Fray.

The judgment and the order after judgment awarding costs are affirmed. Respondents are awarded their appellate fees and costs. We remand to the trial court solely for the purposes of determining the appropriate amounts of these costs and fees. Corrigan, Acting P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

A078559 & A078590 -- Gregg Hackett et al. v. Scott Swanson et al.

The judgment in plaintiffs' favor is affirmed. Defendants shall bear the parties' costs of their appeal from that judgment. The order after judgment denying defendants' motion to tax costs is reversed. The parties shall bear their own costs of that appeal. The matter is remanded to the trial court for correction of the costs award and for determination of costs on appeal. Corrigan, PJ. We concur: Parrilli, J., Walker, J. (Not for Publication.)

A079334 -- The People v. Adam Ramirez.

The judgment is affirmed. Corrigan, Acting P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

A080333 -- In re the Marriage of Janet R. Baum and Claude A. Baum, III.

The order is affirmed. Parrilli, J. We concur: Corrigan, Actg. P.J., Walker, J. (Not for Publication.)

Wednesday, July 29, 1998 (continued)

DIVISION FOUR

A081598 -- The People v. Don Elliott Moore.

The judgment is affirmed. Hanlon, P.J. We concur: Reardon, J.,
McGuinness, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Wednesday, July 29, 1998

The Court met at 9:00 a.m. in its courtroom at 303 - 2nd Street, Fourth Floor, San Francisco. Present: Strankman, P.J., Stein, J., Swager, J. and B. Robbins, Deputy Clerk.

- A079371 Alma Singleton,
v.
Crosby, Heafey, Roach & May.
Cause called and argued by William R. Edgar, counsel for appellant, and Paul Fogel, counsel for respondent. Cause ordered submitted.
- A079712 Lisa Golithon,
v.
County of Sonoma.
Cause called and argued by Dennis J. Byrne, counsel for appellant, and Marshall E. Bluestone, counsel for respondent. Cause ordered submitted.
- A080414 The People,
v.
Raya M.
Cause called and argued by Jeffrey D. Schwartz, counsel for appellant, and Jeffrey M. Laurence, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

COURT RECESSED UNTIL 2:00 P.M.

Court reconvened at 2:00 p.m. Present: Strankman, P.J., Stein, J., Swager, J. and B. Robbins, Deputy Clerk.

- A079923 Frank R. Stonich et al.,
v.
Lilienthal & Fowler.
Cause called and argued by Albert Martin, counsel for appellants, and Cary L. Dictor, counsel for respondent. Cause ordered submitted.
- A080328 Scott A. Swanson,
v.
Hearing Aide Dispensers Examining Committee.
Cause called and argued by James V. Weixel, counsel for appellant, and David M. Carr, Dep. Attorney General, counsel for respondent. Cause ordered submitted.
- A078284 Theodore Paul Wiggins,
v.
Doris A. Tabor.
Cause called and argued by Duane Lyons, counsel for appellant, and Martha L. Caron, counsel for respondent. Cause ordered submitted.
- A077245 The People,
v.
Alvin Cornelius Kimbrough
Cause called and argued by Kyle Gee, counsel for appellant, and Larry Sullivan, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A080154 The People,
v.
Fabian R.
Cause called and argued by Valerie C. West, counsel for appellant, and Jill M. Thayer, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, July 30, 1998

DIVISION ONE

A080110 -- David Francis Anthony v. David Shepardson.

The order awarding costs to defendant is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

DIVISION TWO

A080954 -- The People v. Hugh Clarence Johnson.

Accordingly, we direct the trial court to amend the abstract of judgment to strike the \$200 restitution fine. In all other respects, the judgment is affirmed. Haerle, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A080968 -- The People v. Gurmakh S. Gill.

The judgment is affirmed. Haerle, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A081288 -- The People v. Pladee Tommy Clayton.

The order revoking probation is affirmed. Haerle, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Thursday, July 30, 1998 (continued)

DIVISION THREE

A074636 -- Estate of Evelyn J. Condon, Deceased.

Michael R. Condon et al. v. Caroline M. McHenry.

Reversed and Remanded. Walker, J. We concur: Phelan, P.J., Corrigan, J. (Certified for Publication.)

A076330 -- Michael Murphy et al. v. Fidelity National Title Insurance Company.

The jury award against Fidelity in the amount of \$64,547 is supported by substantial evidence and is affirmed. The Murphys were not entitled to recover attorney fees as damages under the “tort of another” doctrine. The \$160,463.75 posttrial award against Fidelity is reversed. Respondents to recover costs on appeal. Walker, J. We concur: Phelan, P.J., Corrigan, J. (Not for Publication.)

A078241 -- The People v. Vaughn Albert Arnett.

The judgment is affirmed. The superior court is directed to prepare an amended abstract of judgment, striking one of the one-year enhancements under Penal Code section 667.5, subdivision (b) and the two enhancements under Penal Code section 667.9, subdivision (a). Corrigan, Acting P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

A078311 -- The People v. Earl Griffin.

The judgment is affirmed. Corrigan, J. We concur: Phelan, P.J., Walker, J. (Not for Publication.)

Thursday, July 30, 1998 (continued)

DIVISION FOUR

A072489 -- Stephen Lockhart v. Nina Ringgold, Eddye Melaragno.

A076521, A078751 -- Stephen Lockhart v. Nina Ringgold.

We affirm all judgments and orders before us in these consolidated appeals except for the order imposing sanctions on Melaragno pursuant to section 271, which we reverse. The parties will bear their own costs on appeal. Reardon, J. We concur: Poché, Acting P.J., McGuiness, J. (Not for Publication.)

A074791, A075862, A075881, A076305 -- Henrietta Bloomfield et al. v. Patrick J. Murphy et al.

It is ordered that the judgments against appellant and Carolyn Murphy be modified as follows: (1) amounts awarded for the 2.5 “multiplier” of liability are to be eliminated; (2) amounts received by respondents under their settlement with Security Pacific are to be added; and (3) prejudgment interest is to be recalculated on the new amount at the rate of seven percent per annum. As so modified, the judgments are affirmed. The post-judgment orders for payment of attorney’s fees are affirmed. Respondents’ motion for sanctions on appeal is denied. The parties shall bear their own costs on these appeals. The award, if any, of attorney’s fees to

respondents for these appeals is left to the discretion of the trial court. (See *Snyder v. Marcus & Millichap*, *supra*, 46 Cal.App.4th at pp. 1102-1105 [only the prevailing party in the case as a whole is entitled to fees on appeal]); *Mustachio v. Great Western Bank* (1996) 48 Cal.App.4th 1145, 1151 [fee award may be reduced to reflect only partial victory on appeal].) Hanlon, P.J. We concur: Poché, J., Reardon, J. (Not for Publication.)

A077543 -- The People v. Guillermo Rodriguez.

The judgment is reversed. Hanlon, P.J. We concur: Poché, J., McGuiness, J. (Certified for Partial Publication.)

Thursday, July 30, 1998 (continued)

A078980 -- In re Damian P., a Person Coming Under the Juvenile Court Law.

The order of May 30, 1997 denying appellant presumed father status is reversed. Poché, J. We concur: Hanlon, P.J., McGuiness, J. (Not for Publication.)

A079740 -- In re Curtis M., a Person Coming Under the Juvenile Court Law.

The search condition is ordered stricken and the trial court is directed to file an amended judgment deleting said condition. In all other respects, the judgment is affirmed. Reardon, J. We concur: Poché, Acting P.J., McGuiness, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, July 31, 1998

DIVISION ONE

A081544 -- In re Keoni C., a Person Coming Under the Juvenile Court Law.

The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

DIVISION TWO

A080070 -- Chris Mastoras etc. v. City and County of San Francisco.

The judgment is affirmed. Lambden, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A081801 -- The People v. Michael Edward Lewis.

The judgment is affirmed. Ruvolo, J. We concur: Kline, P.J., Lambden, J. (Not for Publication.)

Friday, July 31, 1998 (continued)

DIVISION THREE

A076964 -- Syntex Corporation et al. v. Lowsley-Williams and Companies et al.

No substantial evidence supports the jury's finding that Bliss's discharge of contaminated oil was sudden or accidental. We reverse the trial court's judgment, and order the trial court to vacate its order denying London Insurers' motion for JNOV, enter a new order granting London Insurers' motion for JNOV, and enter judgment in favor of London Insurers. (Code Civ. Proc., § 629.)

London Insurers to recover costs on appeal. Walker, J. We concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

DIVISION FOUR

A079345 -- Fireman's Fund Insurance Company v. Maryland Casualty Company et al.

The judgment is affirmed. Each side shall bear its own costs on appeal. McGuiness, J. We concur: Hanlon, P.J., Reardon, J. (Certified for Publication.)

DIVISION FIVE

A078318/A080306 -- The People v. George William Roberts, In re George William Roberts on Habeas Corpus.

The judgment is affirmed. Appellant's petition for a writ of habeas corpus is denied. Peterson, P.J. We concur: Haning, J., Jones, J. (Not for Publication.)

